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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XR095]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the South Quay Wall Recapitalization Project, Mayport, Florida

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the United States Navy (Navy) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the change being a minor modification to the effective dates. The initial IHA authorizes take of one species of marine mammal, by Level B harassment only, incidental to pile driving associated with the South Quay Wall Recapitalization Project, Naval Station Mayport, Florida. The project has been delayed and none of the work covered in the initial IHA has been conducted. The initial IHA has an effective period from February 15, 2020, through February 14, 2021. The Navy has requested re-issuance with new effective dates of July 1, 2020 through June 30, 2021. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. Therefore, NMFS re-issued the IHA.

DATES: This authorization is effective from July 1, 2020, through June 30, 2021.

ADDRESSES: An electronic copy of the initial IHA, the Navy's initial IHA's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting <https://www.fisheries.noaa.gov/action/incidental-take-authorization-south-quay-wall-recapitalization-project-naval-station-mayport>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On July 26, 2019, NMFS issued an IHA authorizing take of marine mammals incidental to the South Quay Wall Recapitalization Project, Mayport, Florida (84 FR 37841; August 2, 2019). The effective dates of that IHA are February 15, 2020 through February 14, 2021. On December 2, 2019, the Navy informed NMFS that the project was delayed such that work would not begin until July 2020 (i.e., no work would occur between February and July 2020). As such, the Navy requested NMFS re-issue the IHA with a new effective period of July 1, 2020, through June 30, 2021. No other changes to the IHA were requested.

However, with the reissuance request, the Navy notified us that they intend to use a different pile type to construct the new South Quay wall. For reasons described below, we verified use of this pile type will result in a smaller ensonified area during vibratory pile driving and the same ensonified area for impact pile driving (resulting in the same or fewer takes than previously authorized in the initial IHA). All of the other aspects of the activity (*e.g.*, number of pile driving days) would remain identical and, therefore, no changes to take numbers, species taken, or monitoring, mitigation, or reporting measures are necessary. That is, the potential

impacts to marine mammals from the proposed work are the same as were previously analyzed. As such, NMFS determined reissuance is appropriate and NMFS has re-issued the IHA. The reissued IHA is identical to the one issued previously, with the exception of the effective dates, and all of the necessary MMPA findings have been made.

Summary of Specified Activity and Anticipated Impacts

The specified activity for which take is authorized in the reissued IHA remains the same as the initial IHA (i.e., vibratory and impact pile driving). All mitigation, monitoring, and reporting measures, amount of authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

The purpose of the project is to support the existing bulkhead wall that has been weakened by the formation of voids within the wall. To construct the new wall, the Navy initially proposed it would install 240 individual sheet piles over the course of 35 days, averaging 7 to 10 sheet piles installed per day, with a maximum of 15 individual piles installed per day. The Navy has since notified NMFS they have changed the design from an all sheet-pile bulkhead to an alternating sheet pile/ king pile bulkhead. The king piles are comparable to the king piles installed at Mayport's C-2 Wharf and monitored during sound source verification tests for that work. Based on the Navy's 2017 acoustic monitoring report (found at https://www.navy-marine-species-monitoring.us/files/4814/9089/8563/Pile-driving_Noise_Measurements_Final_Report_12Jan2017.pdf), the Navy assumed the source level during vibratory driving of king piles would be 149 decibel root mean square (dB rms). During impact driving (proofing only), the Navy estimated a 180 dB sound exposure level (SEL) source level (Caltrans, 2015). These source levels are less than or equal to sheet pile installation with a vibratory and impact hammer (156 dB rms and 180 dB SEL, respectively) analyzed in the

initial IHA request. The Navy indicated sheet pile driving would occur the same days as king pile driving. The previously analyzed sheet pile driving remains an appropriate representation of the modified work that will be conducted under this IHA. The Navy indicated the number of days of pile driving would not change from the initial IHA despite the design modification. Further, the re-issued IHA contains the identical mitigation, monitoring and reporting measures as the initial IHA.

The only species of marine mammal expected to be taken by the planned activity is the bottlenose dolphin (*Tursiops truncatus*). The data inputs and methods of estimating take are identical to those used in the initial IHA. As such, the manner and amount of authorized take in the reissued IHA is identical to that in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our initial analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial IHA for the Navy's construction work (84 FR 37841, August 2, 2019), the Navy's application, the **Federal Register** notice of the proposed IHA (84 FR 23024, May 21, 2019), and all associated references and documents.

Determinations

The Navy will conduct activities that have impacts less than or equal to those analyzed in the initial IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals is identical to the number that we found met the small numbers standard for issuance of the initial IHA. There are no changes to the status of the stock or the conditions under which the taking would occur. Further, the re-issued IHA includes identical

required mitigation, monitoring, and reporting measures as the initial IHA. For the initial IHA, NMFS found the authorized take would result in a negligible impact to the affected stocks of bottlenose dolphins. No new information has emerged that would suggest we should change our analysis or findings.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Because the only change to the IHA are effective dates, the CE on record for issuance of the initial IHA applies to this action.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species. No incidental take of ESA-listed species is anticipated or authorized in the IHA as none occur in the action area. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the Navy for in-water construction activities associated with the specified activity from July 1, 2020, through June 30, 2021. All previously described mitigation, monitoring, and reporting requirements from the initial IHA are incorporated.

Dated: February 18, 2020.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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